

We write in response to the Department of Homeland Security’s (DHS, or the Department) Notice of Proposed Rulemaking (NPRM or proposed rule) to express recommendations to improve the public charge notice of proposed rulemaking published in the Federal Register on February 24, 2022. First and foremost, GBPI believes that there should be no public charge barrier to immigrating to the U.S. Until then, this rule represents a common-sense approach to implementing the law. If finalized with these recommendations, the rule would provide needed clarity and stability for immigrants and their families. We urge that you finalize a rule that includes our recommendations as soon as possible.

GBPI is committed to advancing lasting, anti-racist solutions that expand economic justice and well-being for all Georgians. This includes immigrant individuals and families. More than 1.2 million Georgians, including 420,000 children, are part of a family with at least one person who is not a citizen. Before the Trump Administration’s public charge rule, which expanded the programs considered when an individual applies for permanent resident status, 610,000 people, including 270,000 children, lived in a Georgia household with at least one family member who is not a citizen and a family member who is receiving at least one public benefit.¹

Anecdotally, direct service providers in immigrant communities noted that many families who were signed up for benefit programs like the Supplemental Nutrition Assistance Program (SNAP) disenrolled out of fear the Trump-era rules would endanger a family member’s status, and many families are still hesitant to apply today despite the repeal of the harmful rule. National figures indicate many non-citizens are pulling their children out of SNAP.² GBPI came out forcefully against that rule and has since hired an immigrant policy analyst to focus on the unique needs of immigrant communities. GBPI continues to work with groups deeply rooted in immigrant communities to raise awareness about the repeal of the Trump-era rule and to educate individuals and families about current policy.

GBPI believes that Georgia and the nation are stronger when we welcome people and recognize their potential. Our communities and economy depend on the diverse gifts and perspectives of non-citizens and citizens who too often receive modest pay and few benefits for their essential work, and public benefits play a critical role in supplementing their earnings. Nationally, such core health, nutrition and housing assistance programs help nearly half of Americans make ends meet.

We appreciate that the NPRM recognizes that use of these supports should in no way be linked to the exclusionary “public charge” provision – they represent the country’s policy choices about how to help all workers and families succeed. Time and again, individuals with limited means give of their time and talent in critical ways – caring for the most vulnerable, saving lives, teaching children and keeping communities fed.

Our immigration policies should not discourage immigrants and their family members from seeking physical or mental health care, nutrition, or housing benefits for which they are eligible. We urge DHS not to exclude people from immigrating simply because conditions in their countries of origin, discrimination

¹ Owens, J. (November 1, 2018), *Potential changes to public charge would negatively impact Georgia families, economy*, Georgia Budget and Policy Institute, <https://gbpi.org/proposed-changes-to-public-charge-rule-could-have-significant-impact-on-georgia-families-economy/>.

² Food Research & Action Center, (May 2021), *New data reveal stark decreases in SNAP participation among U.S. citizen children living with a non-citizen*, <https://frac.org/wp-content/uploads/SNAP-Participation-Among-U.S.-Citizen-Children.pdf>.

they may have faced in the U.S. and other circumstances have made it difficult for them to complete an education, secure professional credentials or earn a high income.

Clear, administrable regulations are needed so that immigrants, their families, along with USCIS officers, states, localities, immigration lawyers, public benefits providers and community enrollment assisters can understand how a public charge assessment will be determined. This is particularly important because lack of clarity can cause the same damage as an overly broad rule. As a consequence of fear or confusion, vague regulations cause immigrant families to avoid interacting with the government and forgo critical public benefits for which they are eligible. These harms can extend outside of the receipt of public benefits, such as a domestic violence survivor forgoing police protection or a parent becoming fearful of seeking health care for their child.

Thank you for the opportunity to submit comments on the proposed rulemaking.

Use of “Alien”

Recommendation: Remove “alien” from the preamble and regulatory text of the public charge rule and replace it in the preamble and the regulatory text with “noncitizens.”

Justification: There is a growing effort to change language as people and institutions recognize the dehumanizing nature of much of the terminology related to immigrants or immigration.³ A recent Policy Memorandum from the Executive Office for Immigration Review (EOIR), directs EOIR staff to use language that is “consistent with our character as a nation of opportunity and of welcome.” EOIR suggests the following language to replace “alien:” respondent, applicant, petitioner, beneficiary, migrant, noncitizen, or non-U.S. citizen.⁴

EOIR bases its memo on President Biden’s Executive Order 14012, Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans (Feb. 2, 2021), affirms that the “Federal Government should develop welcoming strategies that promote integration [and] inclusion.”⁵

³ The National Law Review, (December 2, 2021), *Changing the narrative: a movement to eliminate “dehumanizing” terminology for immigrants*, <https://www.natlawreview.com/article/changing-narrative-movement-to-eliminate-dehumanizing-terminology-immigrants>.

⁴ King, J., (July 23, 2021), *Policy memo to clarify the agency’s use of terminology regarding noncitizens*, U.S. Department of Justice, Executive Office of Immigration Review, <https://www.justice.gov/eoir/book/file/1415216/download>.

⁵ The White House, (February 2, 2021), *Executive order on restoring Faith in our legal immigration systems and strengthening integration and inclusion efforts for new Americans*, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/02/executive-order-restoring-faith-in-our-legal-immigration-systems-and-strengthening-integration-and-inclusion-efforts-for-new-americans/>.

8 CFR § 212.21 Definitions

§ 212.21 (a) Likely at any time to become a public charge.

Recommendation: Delete proposed regulatory text and replace with “8 CFR § 212.21 (a) Likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of (1) Supplemental Security Income (SSI), 42 U.S.C. 1381 et seq.; or (2) Cash assistance for income maintenance under the Temporary Assistance for Needy Families (TANF), 42 U.S.C. 601 et seq.”

Justification: The only two programs that should be relevant in determining whether a person is “likely at any time to become primarily dependent on the government for subsistence” are Supplemental Security Income (SSI) and cash assistance under Temporary Assistance for Needy Families program (TANF) (other than supplemental or special purpose cash benefits). The 1999 Field Guidance indicated that both of these federal programs should be considered in a public charge determination, and HHS agrees that these programs should be included as well.⁶ There is a long history of counting “cash assistance for income maintenance” in a public charge determination dating back to the colonial poor laws.⁷ TANF and SSI are the only programs that should be considered as falling under this construct.

However, receipt of TANF or SSI programs *alone* should not make someone likely to become a public charge, as proposed in 8 CFR § 212.22(a)(3). HHS agrees with this statement and recently indicated that “while receipt of cash assistance does not necessarily mean that an individual is primarily dependent on the government, unlike non-cash benefits, it is relevant to the determination.”⁸

Adjudicators should consider only an applicant’s *current* use of TANF and SSI. Individuals who received benefits in the past and no longer receive them have experienced a change in circumstances that may make them unlikely to need benefits in the future. In addition, DHS should make clear that applicants will be asked to provide information about current receipt of cash benefits from two specific programs, TANF and SSI, and that receipt of those benefits is simply one aspect of the totality of circumstances to be considered. We disagree with the 2022 proposed rule and the letter from HHS which include consideration of long-term institutionalization at government expense in a public charge test. We strongly urge DHS to exclude institutionalization and provide justification below under (c) 8 CFR § 212.21 (c).

§ 212.21 (b) Public Cash assistance for income maintenance

⁶ Palm, A. (February 16, 2022), *Deputy secretary of health and human services, letter to secretary Mayorkas*, U.S. Health and Human Services, <https://www.regulations.gov/document/USCIS-2021-0013-0206>.

⁷ Hester, T., Hirota, H., et al, (October 5, 2018), *Comment on dhs notice of proposed rule inadmissibility on public charge grounds*, FR 2018021196, <https://www.regulations.gov/comment/USCIS-2010-0012-598>.

⁸ Palm, A. (February 16, 2022), *Deputy secretary of health and human services, letter to secretary Mayorkas*, U.S. Health and Human Services, <https://www.regulations.gov/document/USCIS-2021-0013-0206>.

Recommendation: Delete proposed regulatory text. (In other words, move proposed 8 CFR § 212.21 (b) (1) and 8 CFR § 212.21 (b) (2) to section 8 CFR § 212.21 (a) above and delete (b)(3)).

While GBPI understands the inclusion of the two aforementioned federal cash assistance programs, we oppose the inclusion of State, Tribal, territorial, or local benefits, including programs providing cash assistance for income maintenance and recommend that they be removed from the regulatory text.

Justification: Programs funded by state and local government —including any cash assistance that they choose to provide—are an exercise of the powers traditionally reserved to the states. States and localities have a compelling interest in promoting health and safety, which includes their ability to provide benefits at their own expense without barriers caused by federal policies. The Attorney Generals of 19 states collectively commented on the public charge ANPRM advocating that any type of state cash assistance, whether filling a gap for people ineligible for TANF, or cash for specific, supplemental purposes, should not count in a public charge determination, stating: “The undersigned States are charged with safeguarding the public health and promoting the welfare of the people in their jurisdictions. To that end, States make independent public policy determinations, including with respect to providing public benefits to all individuals within their jurisdictions regardless of immigration status.”⁹

Atlanta, Georgia is experimenting with targeted guaranteed income to individuals with low earnings. Two guaranteed income pilots have already been approved in the City of Atlanta (one of the pilots will also include communities in southwest Georgia). Elected officials are also thinking of introducing pilots elsewhere in the city and likely elsewhere in the state. These pilots are targeted in areas with high levels of poverty to reduce hardship and maintain stability for people paid low wages. Other similar pilots elsewhere in the country have been found to increase access to full-time employment and financial stability among those who received the payments.¹⁰ For now, these programs are temporary. However, noncitizens who may be eligible to receive such a valuable benefit, should not feel hesitant to participate in the pilot for fear it could later be a factor in determining their immigration status. **State and local programs can be dynamic and variable.** Like in Atlanta, localities and states continue to experiment with new ways to support their residents, including U.S. citizens, immigrants and their family members. In 2021 alone, more than twenty localities piloted guaranteed income programs.¹¹ In

⁹ Bonta, R., Weiser, P., Jennings, K., Connors, C., Frey, James, L., Tong, W., Racine, K., Raoul, K., Frosh, B., A., Healey, M., Ellison, K., Balderas, H., Shapiro, J., Donovan, T., Ferguson, B., Nessel, D., Bruck, A., Rosenblum, E., Neronha, P., Herring, M., (October 22, 2021), *State attorney general’s comment on advance notice of proposed Rulemaking, public charge ground of inadmissibility*, <https://www.regulations.gov/comment/USCIS-2021-0013-0116>.

¹⁰ A study of the more recent Stockton program found that it increased full time employment by 12 percentage points. West, S., Baker, A., Samra, S., Coltrera, E., (2021) *White paper, Stockton economic empowerment demonstration: Preliminary analysis of seed’s first year*, https://static1.squarespace.com/static/6039d612b17d055cac14070f/t/6050294a1212aa40fdaf773a/1615866187890/SEED_Preliminary+Analysis-SEEDs+First+Year_Final+Report_Individual+Pages+.pdf. A study of the Alaska Permanent fund, which has been running for more than 35 years, found the number of people working part-time increased by a significant 17 percent. Jones, D., and Marinescu, I., (revised January 2020), *The labor market impacts of universal and permanent cash transfer: evidence from the Alaska permanent fund*, NBER Working Paper Series, https://www.nber.org/system/files/working_papers/w24312/w24312.pdf.

¹¹ The National Immigration Law Center, (2021), *State immigrant rights highlights 2021: Advancing community health and well-being*, https://www.nilc.org/wp-content/uploads/2022/01/NILC-Avocacy_WITSReport_011422.pdf.

addition, at least seven states and many localities provided disaster cash for immigrants excluded from federal assistance, and five new states expanded their earned income tax credit to reach certain immigrants. Several states are exploring alternatives to unemployment insurance for excluded workers, and with the federal advance child tax credit expiring, some states are considering providing monthly advance payments of state credits. DHS could attempt to distinguish these types of programs from “cash assistance for income maintenance” in the regulation and should do so if it does not adopt this recommendation to only count SSI and TANF. However, as a practical matter, immigrants and immigration attorneys, who are not experts in the intricacies of public benefits programs, will be afraid to participate in programs designed by their state or local government to support them. The confusion about which programs can be considered in a public charge determination and which are excluded cannot be overstated. In addition, developing and updating guidance or a record of all the programs, including whether they will or will not be considered by immigration officials, will be a complex and burdensome task.

§ 212.21 (d) Receipt of public benefits

Recommendation: We support the narrowing of the definition of “receipt” of countable benefits suggested in the proposed rule. Providing a clearer definition helps to mitigate the chilling effect, especially on children in mixed immigration status households.

Justification: In Georgia, 36 percent of undocumented families have at least one US-born child, and 18.9 percent of native-born children have one or more foreign-born parents.¹² These figures combined amount to at least 500,000 individuals and families who were directly affected by the public charge rule. We know through qualitative data that many families decided to forgo applying for public benefits and in many cases unenrolled due to fear of becoming a public charge. By narrowing the definition of “receipt” families will be able to access these benefits without having to worry about damaging their chances of adjusting their immigration status in the future.

This change will also lead other likely-eligible households to enroll in benefits but who have not applied for them due to fear of public charge or broader immigration concerns. Non-citizens may also have applied for benefits, not realizing that they were ineligible, and/or applied and withdrawn their application, all without having received any benefits in a manner that would count under the proposed definition. The definition likewise recognizes that helping someone else with a successful application does not count; nor does actually applying for a benefit and being certified to receive that benefit for some period into the future count if the intending immigrant has not actually received the benefit.

Any reference to receipt of countable benefits is likely to have some chilling effect on non-citizens’ use of government benefits and services – even those non-citizens and their U.S. citizen family members who are not subject to public charge assessment – being precise about what counts as “receipt” in the manner reflected in the proposed rule is essential to mitigating the chilling effect in immigrant communities. This is especially important because many non-citizens have a relationship to either the

¹² Migration Policy Institute, *Profile of the undocumented population: Georgia*, <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/GA>.

Migration Policy Institute, *Georgia*, <https://www.migrationpolicy.org/data/state-profiles/state/demographics/GA>.

countable public benefits or a long list of non-countable benefits that is distinct from receipt as defined in the proposed rule. They may receive benefits but on behalf of a family member, often a dependent child, without being the named “beneficiary” as required by the rule. This could happen under TANF where an ineligible immigrant parent may be excluded from the assistance unit and the child recipients are considered a “child-only” case.

8 CFR § 212.23 Exemptions and waivers for public charge ground of inadmissibility

Recommendation: We support this provision with respect to the listing of 29 categories of immigrants to whom the public charge ground of inadmissibility does not apply, including those listed in the rescinded 2019 DHS public charge rule and the additional categories.

Justification: Georgia is home to over 1 million foreign-born residents with a multitude of immigration statuses. A comprehensive list can simplify communications with protected immigrants about public charge issues, reduce an unintended “chilling effect” against their use of benefits, and make statutory and regulatory public charge provisions more meaningful in practice. Providing a concrete list will take the guess work out of applying for public benefits. Immigrant families will no longer have to worry that their status will be used against them because they will know up front whether they qualify. This will cut down on the time spent processing applications by government agencies.

Outreach and coordination with federal agencies, states and localities

Having a plan for outreach and coordination with federal agencies, states, and localities will be extremely important if we are to truly mitigate the chilling effect that caused thousands to forgo public service benefits. Georgia has an immigrant population of over one million with 40 percent having limited English proficiency. If the current legislative session has taught us anything, it is that issues affecting the immigrant community are an afterthought. We will continue to hold state agencies accountable; however, if there is a dedicated plan for outreach and coordination, state agencies may find it useful and less intimidating to work with a blueprint that can be adjusted depending on their needs.

We also believe that if we are to reach the appropriate community members there should be a plan to **provide funding to trusted community organizations that can provide outreach and education to immigrants and their families.** Research shows that community organizations are trusted sources of information for immigrant families.⁶⁰ GBPI has the pleasure of knowing and working with some of the most trusted immigrant-serving organizations. They do great work with limited capacity and funding. DHS should provide funding for these organizations so that trusted community leaders can share information about the new public charge rule directly with families, on a one-on-one basis and in public settings like the media.

HHS recently announced outreach grants available to a wide range of organizations, including state/local governments, tribal entities, safety net providers, nonprofits, schools and organizations that use community health workers, community-based doula programs, and more may apply for up to \$1.5

million over three years to connect eligible people to Medicaid or CHIP under the grants.⁶¹ DHS could provide similar grants for organizations to educate people about the final public charge policy.

While community partner education and outreach are critical parts of the awareness campaigns, state agencies must also offer clear and accurate public charge information on their websites and at their offices to ensure everyone who is eligible can apply for benefits free of fear. Federal agencies should require states to clearly post updated public charge information on their websites, at their offices, and in any relevant notices sent to clients.

The USCIS' and Food and Nutrition Services' Joint Letter on Public Charge from January 5, 2022, serves as a good example of how state agencies and community groups can offer clear and concise information about public charge determinations.¹³ However, because it was not required for states to post on their website, Georgia's Department of Human Services did not do so. Community direct service providers expressed how posting the letter on the website would have been helpful to allay clients' concerns about applying for benefits. A posting requirement could help reinforce for immigrants seeking assistance that this is official policy and provide a level of understanding about signing up for public benefits. Finally, any required posting of public charge information must be appropriately translated into multiple languages.

¹³ Dean S., and Jaddou, U., (January 5, 2022), *Joint letter on public charge*, Food and Nutrition Service (FNS) of the U.S. Department of Agriculture and the U.S. Citizenship and Immigration Services of the U.S. Department of Homeland Security, <https://www.fns.usda.gov/snap/joint-letter-public-charge>.